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Chief, Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, NW, Suite 3008
Washington, D.C. 20529

Re: Additional Comments of the Immigrant Women Program of Legal Momentum on the "Domestic Violence Guidance Pamphlet" Required by the International Marriage Broker Regulation Act, DHS Docket No. USCIS-2007-0061

Why We Are Commenting

The Department of Homeland Security ("*DHS*") released a draft information pamphlet ("*Pamphlet*") mandated by the International Marriage Broker Regulation Act of 2005 ("*IMBRA*") on July 22nd, 2008. In addition to the joint comments and suggested revisions to the draft pamphlet submitted by Tahirih Justice Center and the Immigrant Women Program of Legal Momentum, Legal Momentum individually submits the following comments. We offer these comments in response to significant concerns over unmet IMBRA requirements, and to suggest methods of improving implementation procedures. In August 2008 the Government Accounting Office issued a report on the status of compliance with IMBRA by DHS and other government agencies. We are taking this opportunity to supplement our comments on the IMBRA pamphlet with our suggestions for how DHS may improve overall compliance with IMBRA.

Principal Concerns

Development and Distribution of the IMBRA Pamphlet

We commend DHS for having developed a first draft of the IMBRA pamphlet and distributing it for comment. We have submitted detailed comments discussing how the pamphlet can be improved to contain all of IMBRA's required information. (See separately submitted comments and draft brochure containing suggested revisions).

First, we want to assure that this government-produced brochure has the widest distribution possible. This brochure should be distributed at adjustment interviews¹ and at consular interviews.² It should be distributed to all family based visa applicants to give them the basic information they need to protect themselves should they or their children fall victim to family violence.

Second, DHS should develop a timeline and distribution plan for the pamphlet. The plan should provide details about how the pamphlet will be distributed to applicants for family based visas including (I-130 and K visas). It should also discuss plans for receiving from the Department of State translations of the brochures in 14 languages and making those brochures available to applicants for family based visas at all DHS offices and through the DHS website. DHS and DOS should also share these brochures with the Executive Office of Immigration Review for distribution to applicants who appear before immigration judges.

Disclosure of U.S. Citizen Spouse or Fiancé(s) Criminal Conviction Information

We appreciate the efforts that DHS has made to begin the process of collecting criminal information from U.S. citizens applying for K-visas. We wish to highlight important ways this process needs to be improved to fully comply with IMBRA.

First, we want to be sure that DHS checks criminal background information of all US citizen K-visa petitioners, whether or not they disclose criminal history. This is what IMBRA contemplated. We concur with the recommendation of the GAO, and strongly urge DHS to run checks on all U.S. citizens applying for K-visas, and to forward copies of the I-129 to all applicants. The most effective way to distribute this information and have the best possibility of reaching the immigrant spouse or fiancé is to include all IMBRA-required information in the pre-interview packet Department of State (DOS) provides to all K-visa applicants. This is why Congress specifically mentioned that packet in the IMBRA statute.

This method will enable immigrating spouses and fiancés to have this information before the in-person interview with DOS personnel. The interview with DOS staff then provides a second opportunity to give this important and potentially life saving information to the immigrant applicant. This two-pronged approach was included in IMBRA because Congress understood that an abusive fiancé or spouse may remove the information from the packet mailed to the foreign spouse or fiancé. Congress wanted to ensure that a government official who could help explain the information being provided delivered the packet to her in person..

It is also important to note that in doing background checks of citizen petitioners, USCIS should search the national protection order registry located in the National Crime

¹ Government Accounting Office, "International Marriage Broker Regulation Act of 2005: Agencies Have Implemented Some, But Not All of the Act's Requirements," (August 8, 2008) GAO-08-826. Page 21-22 and 35.

² Id.

and Information Center's (NCIC) Protection Order File. Any information about the citizen petitioner's history found in this registry file should be forwarded through the Department of State to the immigrating spouse/fiancé.

Providing the Victim with Information about the Number of Petitions Previously Filed

We appreciate that fact that DHS has created a computerized database where they can reference whether K-visa applicants have previously filed spouse or fiancé visas. However, the GAO report found the DHS currently does not check all K-visa petitioners against this database. DHS only checks this multiple filing database when a petitioner attests to previously filing a fiancé or spouse visa petition. The tracking of multiple filings of spouse and fiancé petitions was one of the key protective provisions in IMBRA. Congress was concerned about serial sponsorship of immigrant fiancés and spouses by U.S. citizens. IMBRA developed a mechanism for tracking multiple filings to address the problem and identify U.S. citizens who may be abusing the process, and may pose a danger to immigrating spouses and children.

To be effective in meeting IMBRA's objectives, all filings by U.S. citizens and lawful permanent residents for spouses and fiancés, whether in the K-visa or the I-130 family-based petition context, need to be checked against the multiple filing database. Otherwise, significant numbers of multiple filers will not be included in the system and will not be tracked. Lawful permanent residents need to be tracked because they may have filed two spousal petitions before they became citizens and then filed more after.

DHS's approach of only running checks against the multiple filing database when the US citizen petitioner self-attests to prior filings is also inconsistent with IMBRA's requirements. IMBRA limits petitioners with respect to the number of petitions one can file without a waiver within specific time frames. This in effect allows a citizen who fails to be truthful about his past filings to evade the system being created to identify such activities. Reliance on self-attestation alone undermines the purpose of government involvement in tracking multiple filers.

Furthermore, according to the GAO report, DHS has stopped trying to mail multiple filing information directly to the immigrating spouse or fiancé due to difficulty obtaining accurate overseas addresses. In order to address this problem, IMBRA requires the delivery of information by mail to the immigrating spouse/fiancé through the Department of State, along with the instruction packet regarding the visa application process. This is the packet that the applicant must receive and complete prior to their visa interview with Department of State officials. DHS can assure that this important information is effectively communicated to immigrating spouses/fiancés by forwarding it along with the I-129, the IMBRA brochure, and the IMBRA-required criminal background check to the DOS to be mailed with the instruction packet. This is the most effective way to ensure that immigrating spouses/fiancés whose US citizen spouse/fiancé has filed more than two petitions in the past 10 years will be notified of this fact.

Also, the GAO report indicates that DHS makes annotations on form I-129 indicating the number of multiple filings that the U.S. citizen petitioner has previously made. Since DHS already indicates the number of previous multiple filings on the I-129 form, we suggest that DHS develop a cover form to be attached to the I-129 form. This cover sheet should be sent to the immigrating spouse or fiancé along with the I-129 form explaining how to read the form and determine how many prior fiancé or spouse visas the U.S. citizen filing for them has filed in the past.

Enhancements to DHS Computer Case Tracking System

USCIS needs to develop a single computerized tracking system that will track filings of fiancé/spouse visa petitions by U.S. citizens to determine when multiple filings occur. DHS should include in the database sufficient information to minimize “multiple hits.” This should include identifying information that will help distinguish between persons in the database (e.g. name, date of birth, social security number, passport number, etc.)

This system will also need to contain information revealed by the U.S. citizen petitioner on the I-129 regarding criminal history. It should also track any information USCIS uncovers during the criminal background check process. This ensures both the efficiency of the K-visa application process and the safety of the visa beneficiary.

We also strongly suggest that DHS create a system for identifying VAWA, T- and U-visas cases so that immigration adjudicators and immigration enforcement agents working in USCIS, Customs and Border Patrol (CBP) and Immigration and Customs Enforcement (ICE) can easily identify and avoid bringing enforcement actions against victims in the process of filing VAWA, T- and U-visa cases. We suggest that all these cases be assigned a red flag, and that DHS staff receive training so that when DHS officials encounter victims with VAWA, T- or U-visa cases they do not pursue enforcement actions against them.

The reason that we are recommending that all cases (VAWA, T- and U-visas) be flagged the same is to preserve VAWA confidentiality. When an ICE or CBP officer encounters a victim who is already in the computer system, they will find that their case is red-flagged, but will not know if the case is a trafficking case, a domestic violence case, a child abuse case or a crime victim case. This approach will help immigration officials comply with VAWA confidentiality mandates. Red-flagging VAWA, T- and U-visa cases offers a simple uniform system that will discourage immigration officials from making arrests that violate VAWA confidentiality laws.³ It is incumbent on immigration officials to identify persons entitled to victim-based benefits, and to exercise prosecutorial discretion not to take actions against them.⁴

³ IIRAIRA Section 384. 8 U.S.C. 1367.

⁴ See e.g. John P. Torres and Marcy Forman, Immigration and Customs Enforcement, “Interim Guidance Relating Officer Procedure Following Enactment of VAWA 2005” January 22, 2007.

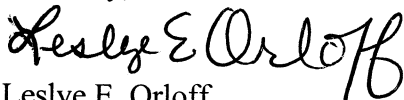
We encourage ICE to consider developing this computer system and the one for tracking multiple filings in the IMBRA context together. Ideally, Vermont Service Center officials adjudicating VAWA, T- or U-visa applications should be able to use the multiple filing database to look for and find citizen or lawful permanent resident spouses with criminal histories.

Civil and Criminal Enforcement of IMBRA

We concur with GAO's recommendation that DHS, DOJ and DOS need to move forward swiftly to establish procedures for investigating, referring and prosecuting potential civil penalties. DOJ has decided that civil penalties will be adjudicated at a hearing before the Chief Administrative Hearing Officer at the DOJ Executive Office for Immigration Review. IMBs need to be held accountable for civil and criminal penalties under IMBRA. Although three years have passed since IMBRA became law, DOJ, DHS and DOS have failed to develop and implement policies to make civil and criminal enforcement a reality. We are concerned that we are seeing a repeat of INS failure to hold IMBs accountable under the International Matchmaking Law that was originally passed as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. IMBRA included civil and criminal penalties in response to almost a decade of inaction under prior law. The agencies should, as GAO recommended, design and implement an enforcement framework.

We appreciate your consideration of these comments and are available to answer any questions you may have.

Sincerely,



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